IN THE HON'BLE HIGH COURT OF JUDICATURE, AT BILASPUR CHHATTISGARH

3

CRIMINAL APPEAL No. 954 /2001

DOLESHWAR
S/o Shri Laxman Ram
Aged about 31 years
Village Gopalpur,
P.O. Surajpur, Tahsil Surajpur,
Dist. Surguja (CG)

...APPELLANT
ACCUSED
(IN JAIL)

R. to AR
05/10/01

-VERSUS-

State of Chhattisgarh
Through O.I.C. of P.S. Surajpur
Dist. Surguja (CG)

...RESPONDENT

MEMORANDUM OF APPEAL U/s 374 (2) OF THE CRIMINAL PROCEDURE CODE

A.F.R.

HIGH COURT OF CHHATTISGARH AT BILASPUR

Criminal Appeal No.954/2001

Single Bench- Hon'ble Shri **Dilip Raosaheb Deshmukh, J.**

Doleshwar

Vs.

State of Chhattisgarh

Present:-
Shri Abhay Tiwari, learned counsel for the appellant.
Shri Ashish Shukla, Govt. Advocate/Additional Public Prosecutor for the State.

ORAL JUDGMENT
(Delivered on 21st of March, 2006)

This appeal is directed against the judgment dated 22-09-2001 delivered by Shri T.N.H.Pancholi, learned VIth Additional Sessions Judge,(F.T.C.), Surajpur, District-Sarguja in Sessions Case No.228/1996 whereby the appellant was convicted under Section-451 & 376 of the IPC but was sentenced only under Section-376 of IPC to rigorous imprisonment for 7 years and fine of Rs.5,000/- and in default of payment of fine to further undergo additional rigorous imprisonment for 6 months.

2. It is not disputed that the appellant had, under Section-294 of Cr.P.C., admitted the genuineness of medical examination report of the prosecutrix by Dr. S.N.Kindo on 20-02-1996 vide Ex.P-16.

3. Briefly stated the prosecution story is that on 19-02-1996 at about 5 P.M. while the prosecutrix was alone in her house in Village-Gopalpur, the appellant who was her brother-in-law came inside the house. The appellant

89

caught hold of the hands of the prosecutrix and threatened to kill her, if she shouted. There was a scuffle in which the bangles of the prosecutrix were broken. The appellant thereafter made the prosecutrix to lie on the ground and mounting upon her committed rape and ran away.

4. At about 6 P.M., when Mst. Hirondiya PW-2 mother-in-law of the prosecutrix and Husband of the prosecutrix Shivram PW-4 returned home, the prosecutrix narrated the incident to them. F.I.R. was lodged vide Ex.P-1 on 20-02-1996 at Police Station-Surajpur, situated about 3 K.M. away from the place of occurrence at 09.15 A.M. Upon being sent for medical examination Dr. I.D.Gupta PW-5 found that although there were no signs of external injury, the prosecutrix was complaining of pain in the right elbow joint and back. The prosecutrix was medically examined by W.A.S. Dr. S.N.Kindo on 20-02-1996 at 4.25 P.M. No injury either external or on her private parts and no evidence of forcible intercourse was found. It was opined that the prosecutrix was habitual of sexual intercourse and therefore no definite opinion about the rape could be given. Vaginal slides of the prosecutrix were prepared and sealed. The accused was also examined by Dr. I.D.Gupta PW-5 on 21-02-1996 and found that he was capable of performing sexual intercourse. One used petticoat of the prosecutrix was seized on 20-02-1996 vide Ex.P-3 and broken bangles were seized from the place of occurrence on 20-02-1996 vide Ex.P-2. One old used underwear of the appellant was also seized on 21-02-1996 vide Ex.p-6.

5. The vaginal slides of the prosecutrix, used petticoat and underwear of the appellant were sent for chemical examination to the Forensic Science Laboratory. Vide

90

opinion dated 30-04-1996 Ex.P-14, presence of semen and human spermatozoa was confirmed on all the articles mentioned above. It was found that the stains were not sufficient for serological examination. After completion of investigation, the appellant was prosecuted under Section-451 & Section-376 of IPC. The appellant abjured the guilt, pleaded innocence and false implication due to election rivalry. The prosecution examined as many as 7 witnesses. The appellant also examined 6 witnesses in support of his defence. The learned trial Judge relying upon the evidence led by the prosecution convicted the appellant under Section-451 & 376 of IPC but imposed the sentence on the appellant only under Section-376 of IPC.

6. Shri Abhay Tiwari, learned counsel for the appellant has assailed the conviction of the appellant on the ground that there is no satisfactory explanation for the delay in lodging the F.I.R. on the next day. He has further contended that the medical examination report Ex.P-5 of the prosecutrix does not corroborate the testimony of the prosecutrix and renders her evidence unreliable. He also relied upon the evidence led by the appellant in his defence to argue that the appellant had been falsely implicated upon an election rivalry. Para-12 of the evidence of the prosecutrix was also referred to while arguing that the conduct of the prosecutrix in not raising an alarm immediately after the door was closed by the appellant rendered her testimony unworthy of credit. On the other hand, Shri Ashish Shukla, learned counsel appearing for the State has argued in support of the impugned judgment.

7. Having heard rival contentions, I have gone through the record. The prosecutrix has clearly stated that while she

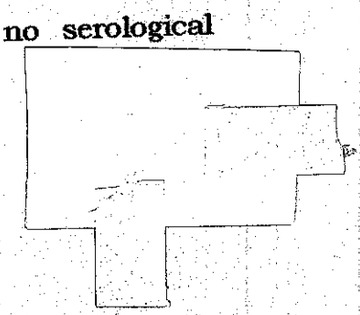
was alone in the house, she heard a knock on the door. After opening the door, the appellant came inside the house. Since, she respected the appellant, she offered a chair and was about to proceed towards the courtyard that the appellant closed the door and caught hold of her hands, due to which her bangles were broken. She has further testified that the appellant threatened that if she shouted he would kill her. The appellant thereafter closed the main door from inside and took her inside the courtyard and made her lie on the ground and committed rape on her. Thereafter, the appellant ran away. The testimony of the prosecutrix is wholly corroborated by her mother-in-law Mst. Hirondiya PW-2 and also by her husband Shivram PW-4 who have deposed that immediately after their return at home in the evening at about 6 P.M., the prosecutrix had narrated the incident to them. The testimony of the prosecutrix is also corroborated by Dr.I.D.Gupta PW-5 who found upon medical examination of the prosecutrix that she was complaining of pain in the right elbow joint and back. I have also gone through the testimony of the prosecutrix minutely. I find that it inspires confidence. So far as the defence taken by the appellant relating to false implication upon an election rivalry is concerned, no such question was put to the husband of the prosecutrix Shivram PW-4. I have also perused the testimony of witnesses examined by the appellant in defence and I am of the considered opinion that the evidence led by the appellant does not help the appellant in any manner. Prosecutrix has stood the test of cross examination. So far as the absence of any external injuries on her private parts is concerned, it also does not help the appellant in any manner, since the prosecutrix is a married woman.

92

8. The arguments relating to unworthiness of the testimony of the prosecutrix in para-12 concerned have to be stated only to be rejected. Since the appellant was a relation of the prosecutrix, she allowed the appellant to come inside the house. The prosecutrix could not have any idea about the ulterior motive of the appellant. Besides, the testimony of the prosecutrix that she did not shout since the appellant had threatened to kill her, is also trustworthy.

9. So far as the arguments relating to delay in lodging the F.I.R. is concerned it is unacceptable. The prosecutrix immediately informed about the incident at 6 P.M. when her husband Shivram PW-4 and mother-in-law Mst. Hirondiya PW-2 returned home on the same day. Their evidence also shows that the husband and mother-in-law of the prosecutrix had immediately informed the elderly persons of the village and the Kotwar about the incident but the appellant had absconded from the village after the incident. Therefore, it cannot be said that there is no satisfactory explanation for lodging the F.I.R. on the next day at 09.15 A.M.

10. Having thus considered the evidence led by the prosecution in its entirety, I am of the considered opinion that the testimony of the prosecutrix is trustworthy and is wholly corroborated not only by Mst. Hirondiya PW-2 & Shivram PW-4 but also by the F.I.R. Ex.P-1 and the medical evidence of Dr. I.D.Gupta PW-5. So far as the report Ex.P-14 of Forensic Science Laboratory is concerned, it cannot be lost sight off that the prosecutrix is a married lady, the first information report was lodged on the next day after the occurrence and no serological



93

examination was done to show that the semen and human spermatozoa on the vaginal slide matched with the semen of the appellant.

11. Having thus considered the evidence led by the prosecution in its entirety, I am of the considered opinion that the conviction of the appellant and sentence awarded thereunder by the learned trial Judge does not call for any interference.

12. In the result, this appeal has no substance and is accordingly dismissed.

Sd/-
DILIP RAOSAHEB DESHMUKH
Judge

Tumane